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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,951	01/17/2002	John R. Hind	RSW920010122US1	1746

7590 05/23/2007

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 05/23/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 10/051,951	<b>Applicant(s)</b> HIND ET AL.	
	<b>Examiner</b> Jacob F. Bétit	<b>Art Unit</b> 2164	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 16 January 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

  
**SAM RIMELL**  
**PRIMARY EXAMINER**

Continuation of 10. Other (including any explanation in support of the above items):

The amendment filed 15 November 2007 cannot be entered for the purposes of appeal. Although the examiner indicated during a conversation in December that the advisory action was in error, this does not change the fact that it is improper to appeal claims that have not yet been examined.

According to 37 CFR §41.31(c), "An appeal, when taken, must be taken from the rejection of all the claims under rejection which the applicant or owner proposes to contest." Since the newly added claims 94-99 are not currently under rejection, there is no rejection for the applicant to appeal. Therefore although the examiner was in error for checking box 3 in the advisory action, box 7 was marked correctly.

Further the amendment dated 15 November 2007 cannot be entered because it is not in compliance with 37 CFR §1.121(c). Claims 56 and 57 are not amended from the previous version. In the listing of claims these claims are labeled as "Currently Amended" and have markings to indicate an amendment is being made. These amendments were already made in the amendment dated 14 June 2006. Claims 56 and 57 should be indicated as "Previously Presented", and the markings to show changes should be removed.

For the reasons stated above the appeal brief is non-compliant. In response to this notice, the applicant is advised to: 1) Appeal the rejection of the claims set forth in the Non-Final rejection dated 17 August 2006 by filing an appeal brief that properly addresses these claims; or 2) File a Request for Continued Examination, with fee, including an amendment that corrects the errors to the non-entered amendment, pointed out above.

Should the applicant have any questions regarding this notice, the applicant is invited to call Examiner Jacob F. Betit at (571) 272 4075.